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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Ryan Payne and Victoria Sharp,
Plaintiffs.

v.

W. Joseph Astarita, individually and in his official capacity as an agent of the FBI, Defendants 1X through 6x, individually and in their official capacity as agents of the Oregon State Police, Greg T. Bretzing, individually and in his capacity as an officer of the FBI, Defendants 7x through 12x, individually and in their official capacity as officers of the FBI, Defendants.

No. 2:18-cv-165-MO

Defendants Greg Bretzing's and the United States of America's Motion for Judicial Notice In Support of their Motions to Dismiss Pursuant to Fed. R. Civ. P. 12 (b) Oral Argument Requested

DEFENDANT GREG BRETZING'S AND THE UNITED STATES OF AMERICA'S PARTIAL CONSENT MOTION FOR JUDICIAL NOTICE OF MATERIALS SUBMITTED IN SUPPORT OF THEIR MOTIONS TO DISMISS UNDER FEDERAL RULE OF EVIDENCE 201

Defendant Greg Bretzing and the United States of America, hereby move pursuant to LR 7-1(b), with partial consent of Plaintiffs, that the Court take judicial notice of materials submitted in support of their motions to dismiss under Fed. R. Evid. 201. In support of said motions, the Defendants state the following:

ARGUMENT

“In ruling on a 12(b)(6) motion, a court may consider “allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)(citation omitted). Federal Rule of Evidence 201 states that a “court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *Id.*; see *Rogers v. Horsely*, 13 F. App’x 281 (9th Cir. 2005); *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001); *Alton v. Medtronic, Inc.*, 970 F. Supp. 2d 1069, 1074 (D. Or. 2013).

Courts may take notice of judicial filings in other courts and government agency records where the facts contained therein are not subject to reasonable dispute. *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004) (explaining that a court may take judicial notice of a government agency’s records and other undisputed matters of public record under Fed. R. Evid. 201). Publications such as newspapers, magazines and books and items found on the internet may also be proper subjects of judicial notice if they are matters of public record or in the public realm. See *Vesta Corp. v. Amdocs Mgmt.*, 80 F. Supp. 3d 1152, 1157 (D. Or. 2015) (taking judicial notice of SEC filings, press releases, and webpages); *Doe v. Archdiocese of Portland*, 717 F. Supp. 2d 1120, 1129-30 (D. Or. 2010) (proper to take judicial notice of news media reports alleging sexual abuse by Roman Catholic priests, not for the truth of the contents but to show

what was reported in the public realm); *see also Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954 (9th Cir. 2010) (proper for district court to take judicial notice of newspaper, magazine and book publications about paintings allegedly stolen by the Nazis in World War II and sold to a CA museum not for contents but to indicate what was in the public realm).

The Defendants reference judicial filings, court records, and government agency records in their motions to dismiss containing facts that are not subject to reasonable dispute under Rule 201.¹ *See e.g.* docketed filings and orders in *United States v. Payne*, 16-cr-00051, *Cox v. United States of America*, 17-cv-00121; *United States v. Astarita*, 17-cr-00226-JO. These materials are helpful to understanding the events and context from which this case arose. The Defendants also reference media sources and articles that demonstrate what was in the public realm at the time of the events that are the subject of this case. These news sources are properly the subject to judicial notice under Rule of Evidence 201, and the Court is free to consider the cited sources for that purpose.

Pursuant to LR 7-1 (a), counsel certifies that conferred in good faith with Plaintiffs' counsel on May 3, 2019 and Plaintiffs consent to judicial notice of official court proceedings evidencing judgments only.

Respectfully submitted,

JOSEPH HUNT
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¹ Although Greg Bretzing's Motion to Dismiss incorporates the referenced background materials, the Court is free to consider the same cited sources in considering the United States of America's motion to dismiss to understand the events and context from which this case arose.

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2019, I filed the foregoing motion through the CM/ECF system, causing the following individuals to be served by electronic means, as reflected in the Notice of Electronic Filing:

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